

46 Am. Jur. 2d Judges § 67

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Judges

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VIII. Liabilities

A. Civil Liability

2. Liability for Particular Types of Conduct

a. In General; Conduct Within Scope of Rule of Absolute Judicial Immunity

§ 67. Conduct covered by rule of absolute judicial immunity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  35, 36

The courts generally have distinguished between judicial acts and administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform.¹ Judges have absolute immunity for judicial acts,² even where the judge's acts are alleged to have been done maliciously or corruptly³ or where the act is unfair, injurious, or inappropriate.⁴ In other words, a judge does not lose judicial immunity because an action is erroneous, malicious, in excess of authority, or disregarding of elementary principles of procedural due process, as long as the judge had jurisdiction over the subject matter before the judge; a judge will lose the cloak of immunity only when the judge conducts proceedings over which the judge lacks any semblance of subject-matter jurisdiction.⁵ The doctrine of judicial immunity is so expansive that it is overcome only when (1) the action is nonjudicial, that is, not taken in the judge's judicial capacity; or (2) the action, although judicial in nature, is performed in the complete absence of any jurisdiction.⁶ However, judicial immunity is not designed to insulate the judiciary from all aspects of accountability,⁷ and the mere fact that a defendant in a civil action is a judge does not mean that the defendant is entitled to absolute judicial immunity.⁸ Judges are not absolutely immune from liability and damages for administrative, legislative, or executive functions that judges may occasionally be assigned by law to perform; it is the nature of the function performed, adjudication, rather than the identity of the actor who performed it, a judge, that determines whether absolute immunity attaches to the act.⁹ Even so, other types of immunity may apply in such circumstances.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Quasi-judicial immunity barred pro se plaintiff's claims for damages against county judge in her official capacity, relating to, inter alia, judge's dismissal of his disciplinary complaint against another judge in connection with that judge's denial of his motion to modify child support; judge had performed adjudicatory functions as member of judicial disciplinary board. *Moore v. Yardely*, 376 F. Supp. 3d 1004 (D. Neb. 2019).

Circuit court judge had jurisdiction to enter orders denying prisoner's motions for leave to amend to add a Public Records Act claim, which judge deemed were a motion for post-conviction relief, and thus judicial immunity insulated judge from prisoner's claim that judge violated Public Records Act; State Constitution vested jurisdiction in the circuit courts in all matters civil and criminal not vested by the Constitution in some other court. *Miss. Code. Ann. § 25-61-15. Pryer v. Gardner*, 247 So. 3d 1245 (Miss. 2018).

Judge was entitled to judicial immunity from former court administrator's claim of libel based on judicial orders containing footnotes stating that former administrator had been reprimanded by judge for engaging in improper ex parte communications while she was court administrator, where orders were entered in criminal matters over which judge had subject-matter jurisdiction. *Weill v. Bailey*, 227 So. 3d 931 (Miss. 2017).

[END OF SUPPLEMENT]

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Footnotes

- 1 *Forrester v. White*, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988).
- 2 *Mylett v. Mullican*, 992 F.2d 1347 (5th Cir. 1993).
- 3 *Regan v. Price*, 131 Cal. App. 4th 1491, 33 Cal. Rptr. 3d 130 (3d Dist. 2005).
- 4 *Kalmanson v. Lockett*, 848 So. 2d 374 (Fla. 5th DCA 2003).
- 5 *Stiggle v. Tamburini*, 467 F. Supp. 2d 183 (D.R.I. 2006).
- 6 As to the effect of jurisdiction or the lack thereof on judicial immunity, generally, see §§ 74 to 76.
Bright v. Gallia County, Ohio, 753 F.3d 639 (6th Cir. 2014), cert. denied, 135 S. Ct. 1561, 191 L. Ed. 2d 663 (2015); *Miller v. County of Nassau*, 467 F. Supp. 2d 308 (E.D. N.Y. 2006); *Heiskell v. Roberts*, 295 Ga. 795, 764 S.E.2d 368 (2014).
A judge does not receive absolute immunity for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity, and a judge does not receive absolute immunity for actions, though judicial in nature, taken in the complete absence of all jurisdiction. *Brooks v. Clark County*, 828 F.3d 910 (9th Cir. 2016).
To determine whether a judge enjoys absolute immunity, courts apply a two-part test: first, whether the judge performed the actions at issue in a judicial capacity, and if so, whether the judge acted in the clear absence of all jurisdiction. *Beepot v. J.P. Morgan Chase Nat. Corporate Services, Inc.*, 57 F. Supp. 3d 1358 (M.D. Fla. 2014), aff'd, 626 Fed. Appx. 935 (11th Cir. 2015).
- 7 *Dennis v. Sparks*, 449 U.S. 24, 101 S. Ct. 183, 66 L. Ed. 2d 185 (1980).
- 8 *Crooks v. Maynard*, 913 F.2d 699 (9th Cir. 1990).
- 9 *Forrester v. White*, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988).
- 10 §§ 70 to 73.

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